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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,819	07/08/2003	Stephen H. Zalewski	12745/2	2691

7590

10/31/2005

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EXAMINER

BACKER, FIRMIN

ART UNIT

PAPER NUMBER

3621

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/616,819

Applicant(s)

ZALEWSKI ET AL.

Examiner

FIRMN BACKER

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Therrien et al (U.S. PG Pub No. 2004/0093555).

3. As per claims 1, 8 and 15, Therrien et al teach method, set of instruction and a system comprising storing a set of data on a data storage medium, displaying a graphical user interface to a user, wherein the graphical user interface is a graphical representation of a data protection policy and a replication policy; and providing the user with an ability to modify the data protection policy and the replication policy through the graphical user interface (*see abstract paragraphs 0027, 0029, 0033-048, 0069*).

4. As per claims 2-4, 9-11 and 16, Therrien et al teach method set of instruction and a system further comprising modifying the data protection and replication policy based on input received from the user through the graphical user interface that display a logical source volume (*see abstract paragraphs 0027, 0029, 0033-048, 0069*).

5. As per claims 5-7, 12-14 and 17-19, Therrien et al teach method set of instruction and a system wherein the data protection policy is a physical failure policy, a logical failure policy, and the replication policy a scheduling policy (*see abstract paragraphs 0027, 0029, 0033-048, 0069*).

6. As per claim 20, Therrien et al teach method set of instrudion and a system wherein the input device includes at least one of a mouse, keyboard, pointing device, touch screen, stylus, joystick, game pad, track ball, light pen, microphone, and speech recognition device (*see abstract paragraphs 0027, 0029, 0033-048, 0069*).

### ***Response to Arguments***

7. Applicant's arguments filed August 30<sup>th</sup>, 2005 have been fully considered but they are not persuasive.

a. Applicant argue that as regards the Therrien '555 reference, it is not entitled to rely on Provisional Application No. 60/409,684 for an earlier effective filing date for purposes of this Section 102(e) rejection. Applicant argue that the earlier \$684 provisional application does not include the subject matter, which was asserted by the Office Action to disclose the recited features of independent claims 1, 8 and 15 with respect to "displaying a graphical user interface to a user, wherein the graphical user interface is a graphical representation of a data protection policy and a replication policy" or "providing the user with an ability to modify the data protection policy and the

replication policy through the graphical user interface. Examiner respectfully disagrees with Applicant characterization of the prior art. Upon a complete investigation of the provided copy of the provisional application, it is found that the provisional discloses a protection Manager (14) that maintains a protection policy. The protection policy is discussed in greater detail in fig 4 of the application which is a representation of an administrator graphical interface that is used to set replication policy for the system (*see fig 4 paragraphs 0033-0048*). Therefore the rejection is sustained.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

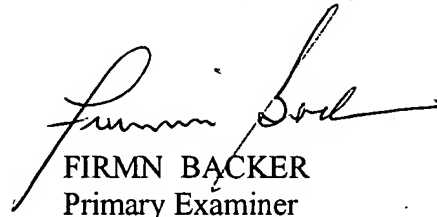
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to FIRMN BACKER whose telephone number is 571-272-6703.

The examiner can normally be reached on Monday - Thursday 9:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
FIRMN BACKER  
Primary Examiner  
Art Unit 3621

October 27, 2005